

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MOD SUPER FAST PIZZA, LLC, a Delaware  
corporation,

Plaintiff,

v.

CARL CHANG, et al.,

Defendants.

CASE NO. 2:12-CV-01359-TSZ

**CMCB VENTURES, LLC'S ANSWER  
TO SECOND AMENDED  
COMPLAINT**

**JURY DEMAND**

AND RELATED COUNTERCLAIM

Defendant CMCB Ventures, LLC ("CMCB"), for itself and for no other defendant, hereby submits its Answer to plaintiff MOD Super Fast Pizza, LLC's ("MOD") Second Amended Complaint (the "Complaint"). Unless indicated differently, each paragraph below corresponds with the paragraph of the Complaint bearing the same number. To the extent that the unnumbered paragraphs, captions, and/or headings in the Complaint are treated as allegations, such paragraphs, captions, and headings are hereby denied.

1. CMCB admits that MOD purports to bring claims for trade dress infringement, misappropriation of trade secrets, and tortious interference with contractual

1 relations, breach of contract, civil conspiracy, and permanent injunctive relief, but denies  
2 that MOD's claims have any merit.

3 2. CMCB denies that it owns or operates any pizza restaurants in Southern  
4 California under the name "Pieology Pizzeria." CMCB lacks sufficient knowledge or  
5 information regarding the remaining allegations contained in the corresponding paragraph  
6 of the Complaint to admit or deny, and, on that basis, denies all such remaining allegations.

7 **I. PARTIES**

8 1. CMCB lacks sufficient knowledge or information regarding the allegations  
9 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
10 basis, denies all such allegations.

11 2. CMCB admits that Carl Chang is a resident of Southern California. Except as  
12 expressly admitted and alleged herein, CMCB denies the allegations contained in the  
13 corresponding paragraph of the Complaint.

14 3. CMCB admits that it is a limited liability company organized under the laws  
15 of the State of Washington, with its principal place of business in Rancho Santa Margarita,  
16 California. Except as expressly admitted and alleged herein, CMCB denies the allegations  
17 contained in the corresponding paragraph of the Complaint.

18 4. CMCB lacks sufficient knowledge or information regarding the allegations  
19 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
20 basis, denies all such allegations.

21 5. CMCB lacks sufficient knowledge or information regarding the allegations  
22 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
23 basis, denies all such allegations.

24 6. CMCB lacks sufficient knowledge or information regarding the allegations  
25 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
26 basis, denies all such allegations.

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## II. JURISDICTION AND VENUE

1. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from CMCB. To the extent a response is required, CMCB admits that this Court has subject matter jurisdiction over the claims alleged in the Complaint.

2. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from CMCB. To the extent a response is required, CMCB denies that venue is proper in this judicial district.

3. The allegations contained in the corresponding paragraph of the Complaint are legal conclusions and require no response from CMCB. To the extent a response is required, CMCB admits that the Court has personal jurisdiction over it. Except as expressly admitted and alleged herein, CMCB denies the allegations contained in the corresponding paragraph of the Complaint.

## III. FACTS

### CREATION AND DEVELOPMENT OF MOD'S TRADE DRESS AND TRADE SECRETS.

1. CMCB admits that, in or around May 2008, it made an investment in MOD, and acquired 150 "Class A Units" in MOD. In or around May 2010, CMCB returned those "Class A Units" to MOD, and MOD returned to CMCB the money it had invested. CMCB denies that Carl Chang, in his individual capacity, was an investor in MOD. Except as expressly admitted and alleged herein, CMCB lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

2. CMCB lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

1           3.     CMCB lacks sufficient knowledge or information regarding the allegations  
2 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
3 basis, denies all such allegations.

4           4.     CMCB lacks sufficient knowledge or information regarding the allegations  
5 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
6 basis, denies all such allegations.

7           5.     CMCB denies that MOD restaurants feature a distinctive, non-functional  
8 combination of design, look, feel, menu, and style of service. CMCB lacks sufficient  
9 knowledge or information regarding the remaining allegations contained in the  
10 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
11 such allegations.

12          6.     CMCB denies that MOD owns any protectable trade dress. CMCB denies  
13 that MOD uses a distinctive, non-functional combination of features. CMCB lacks  
14 sufficient knowledge or information regarding the remaining allegations contained in the  
15 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
16 such allegations.

17          7.     CMCB admits that the articles quoted in the corresponding paragraph of the  
18 Complaint in all respects speak for themselves. CMCB denies that MOD owns any  
19 protectable trade dress. CMCB denies that the “recognition and popularity of the MOD  
20 trade dress is evident” from the articles quoted in the corresponding paragraph of the  
21 Complaint. CMCB lacks sufficient knowledge or information regarding the remaining  
22 allegations contained in the corresponding paragraph of the Complaint to admit or deny,  
23 and, on that basis, denies all such allegations.

24          8.     CMCB denies each and every allegation contained in the corresponding  
25 paragraph of the Complaint.  
26  
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1           9.     CMCB lacks sufficient knowledge or information regarding the allegations  
2 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
3 basis, denies all such allegations.

4                           **DEFENDANTS' BACKGROUND WITH MOD**

5           10.    CMCB lacks sufficient knowledge or information regarding the allegations  
6 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
7 basis, denies all such allegations.

8           11.    CMCB lacks sufficient knowledge or information regarding the allegations  
9 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
10 basis, denies all such allegations.

11          12.    CMCB lacks sufficient knowledge or information regarding the allegations  
12 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
13 basis, denies all such allegations.

14          13.    CMCB lacks sufficient knowledge or information regarding the allegations  
15 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
16 basis, denies all such allegations.

17          14.    CMCB lacks sufficient knowledge or information regarding the allegations  
18 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
19 basis, denies all such allegations.

20          15.    CMCB lacks sufficient knowledge or information regarding the allegations  
21 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
22 basis, denies all such allegations.

23          16.    CMCB lacks sufficient knowledge or information regarding the allegations  
24 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
25 basis, denies all such allegations.

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17. CMCB lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

18. CMCB lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

19. CMCB lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

20. CMCB admits that, in or around May 2008, it made an investment in MOD, and acquired 150 "Class A Units" in MOD. In or around May 2010, CMCB returned those "Class A Units" to MOD, and MOD returned to CMCB the money it had invested. CMCB denies that Carl Chang, in his individual capacity, was an investor in MOD. Except as expressly admitted and alleged herein, CMCB denies the allegations contained in the corresponding paragraph of the Complaint.

21. CMCB admits that, in connection with its investment in MOD, it executed MOD's limited liability company agreement. CMCB admits that that agreement, in all respects, speaks for itself. CMCB admits that it, on occasion, received updates regarding MOD. Except as expressly admitted and alleged herein, CMCB denies the allegations contained in the corresponding paragraph of the Complaint.

#### **DEFENDANTS' UNLAWFUL ACTIVITIES**

22. CMCB lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

23. CMCB lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

24. CMCB denies utilizing, relying on, sharing, taking advantage of, exploiting, or communicating to third parties any confidential information or trade secrets belonging to MOD. CMCB lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

25. CMCB lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

26. CMCB lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

27. CMCB lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

28. CMCB denies that it owns or operates any pizza restaurants in Southern California under the name "Pieology." CMCB denies that MOD has any protectable trade dress. CMCB denies that it misappropriated any trade dress, trade secrets, or confidential information from MOD. CMCB lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

29. CMCB lacks sufficient knowledge or information regarding the allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

30. To the extent that allegations in the corresponding paragraph of the Complaint are directed to CMCB, CMCB denies those allegations. CMCB lacks sufficient knowledge or information regarding the remaining allegations contained in the

1 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
2 such allegations.

3 31. CMCB lacks sufficient knowledge or information regarding the allegations  
4 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
5 basis, denies all such allegations.

#### 6 **IV. CLAIMS AND CAUSES OF ACTION**

##### 7 **Count 1: Trade Dress Infringement Under 15 U.S.C. 1125(a)**

8 1. In response to the corresponding paragraph of the Complaint, CMCB hereby  
9 repeats and incorporates herein by reference the responses to the preceding paragraphs, as  
10 though fully set forth herein.

11 2. CMCB denies each and every allegation contained in the corresponding  
12 paragraph of the Complaint.

13 3. CMCB denies each and every allegation contained in the corresponding  
14 paragraph of the Complaint.

15 4. CMCB denies each and every allegation contained in the corresponding  
16 paragraph of the Complaint.

17 5. CMCB denies each and every allegation contained in the corresponding  
18 paragraph of the Complaint.

19 6. CMCB denies each and every allegation contained in the corresponding  
20 paragraph of the Complaint.

##### 21 **Count 2: Misappropriation of Trade Secrets Under RCW 19.108 et seq.**

22 7. In response to the corresponding paragraph of the Complaint, CMCB hereby  
23 repeats and incorporates herein by reference the responses to the preceding paragraphs, as  
24 though fully set forth herein.

25 8. CMCB lacks sufficient knowledge or information regarding the allegations  
26 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
27 basis, denies all such allegations.

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1           9.       CMCB lacks sufficient knowledge or information regarding the allegations  
2 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
3 basis, denies all such allegations.

4           10.       CMCB lacks sufficient knowledge or information regarding the allegations  
5 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
6 basis, denies all such allegations.

7           11.       To the extent that allegations in the corresponding paragraph of the  
8 Complaint are directed to CMCB, CMCB denies those allegations. CMCB lacks sufficient  
9 knowledge or information regarding the remaining allegations contained in the  
10 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
11 such allegations.

12           12.       To the extent that allegations in the corresponding paragraph of the  
13 Complaint are directed to CMCB, CMCB denies those allegations. CMCB lacks sufficient  
14 knowledge or information regarding the remaining allegations contained in the  
15 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
16 such allegations.

17           13.       CMCB denies that MOD has been damaged. To the extent that allegations in  
18 the corresponding paragraph of the Complaint are directed to CMCB, CMCB denies those  
19 allegations. CMCB lacks sufficient knowledge or information regarding the remaining  
20 allegations contained in the corresponding paragraph of the Complaint to admit or deny,  
21 and, on that basis, denies all such allegations.

22                   **Count 3: Tortious Interference with Contractual Relations**

23           14.       In response to the corresponding paragraph of the Complaint, CMCB hereby  
24 repeats and incorporates herein by reference the responses to the preceding paragraphs, as  
25 though fully set forth herein.

16. CMCB denies that it had knowledge of any contract between Mr. Markham and MOD. CMCB lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

17. To the extent that allegations in the corresponding paragraph of the Complaint are directed to CMCB, CMCB denies those allegations. CMCB lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

18. CMCB denies that MOD has been damaged. To the extent that allegations in the corresponding paragraph of the Complaint are directed to CMCB, CMCB denies those allegations. CMCB lacks sufficient knowledge or information regarding the remaining allegations contained in the corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all such allegations.

19. In response to the corresponding paragraph of the Complaint, CMCB hereby repeats and incorporates herein by reference the responses to the preceding paragraphs, as though fully set forth herein.

20. CMCB admits that, in connection with its investment in MOD, executed MOD's limited liability company agreement. CMCB admits that that agreement, in all respects, speaks for itself. CMCB denies the allegations contained in the corresponding paragraph of the Complaint that characterize the limited liability company agreement. CMCB lacks sufficient knowledge or information regarding the remaining allegations

1 contained in the corresponding paragraph of the Complaint to admit or deny, and, on that  
2 basis, denies all such allegations.

3 21. To the extent that allegations in the corresponding paragraph of the  
4 Complaint are directed to CMCB, CMCB denies those allegations. CMCB lacks sufficient  
5 knowledge or information regarding the remaining allegations contained in the  
6 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
7 such allegations.

8 22. To the extent that allegations in the corresponding paragraph of the  
9 Complaint are directed to CMCB, CMCB denies those allegations. CMCB lacks sufficient  
10 knowledge or information regarding the remaining allegations contained in the  
11 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
12 such allegations.

13 23. CMCB denies each and every allegation contained in the corresponding  
14 paragraph of the Complaint.

15 24. CMCB denies that MOD has been damaged. To the extent that allegations in  
16 the corresponding paragraph of the Complaint are directed to CMCB, CMCB denies those  
17 allegations. CMCB lacks sufficient knowledge or information regarding the remaining  
18 allegations contained in the corresponding paragraph of the Complaint to admit or deny,  
19 and, on that basis, denies all such allegations.

20 **Count 5: Civil Conspiracy**

21 25. In response to the corresponding paragraph of the Complaint, CMCB hereby  
22 repeats and incorporates herein by reference the responses to the preceding paragraphs, as  
23 though fully set forth herein.

24 26. To the extent that allegations in the corresponding paragraph of the  
25 Complaint are directed to CMCB, CMCB denies those allegations. CMCB lacks sufficient  
26 knowledge or information regarding the remaining allegations contained in the  
27

1 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
2 such allegations.

3 27. To the extent that allegations in the corresponding paragraph of the  
4 Complaint are directed to CMCB, CMCB denies those allegations. CMCB lacks sufficient  
5 knowledge or information regarding the remaining allegations contained in the  
6 corresponding paragraph of the Complaint to admit or deny, and, on that basis, denies all  
7 such allegations.

8 28. CMCB denies that MOD has been damaged. To the extent that allegations in  
9 the corresponding paragraph of the Complaint are directed to CMCB, CMCB denies those  
10 allegations. CMCB lacks sufficient knowledge or information regarding the remaining  
11 allegations contained in the corresponding paragraph of the Complaint to admit or deny,  
12 and, on that basis, denies all such allegations.

### 13 **Count 6: Permanent Injunctive Relief**

14 29. In response to the corresponding paragraph of the Complaint, CMCB hereby  
15 repeats and incorporates herein by reference the responses to the preceding paragraphs, as  
16 though fully set forth herein.

17 30. CMCB denies that MOD has been damaged. To the extent that allegations in  
18 the corresponding paragraph of the Complaint are directed to CMCB, CMCB denies those  
19 allegations. CMCB lacks sufficient knowledge or information regarding the remaining  
20 allegations contained in the corresponding paragraph of the Complaint to admit or deny,  
21 and, on that basis, denies all such allegations.

22 31. The allegations contained in the corresponding paragraph of the Complaint  
23 are legal conclusions and require no response from CMCB. To the extent a response is  
24 required, CMCB denies the allegations contained in the corresponding paragraph of the  
25 Complaint.

26 32. The allegations contained in the corresponding paragraph of the Complaint  
27 are legal conclusions and require no response from CMCB. To the extent a response is

1 required, CMCB denies the allegations contained in the corresponding paragraph of the  
2 Complaint.

### 3 **V. AFFIRMATIVE DEFENSES**

4 In farther answer to the Complaint, CMCB asserts the following separate and  
5 affirmative defenses. Defendant deserves the right to raise additional affirmative defenses as  
6 they become known to it through discovery or investigation.

#### 7 FIRST AFFIRMATIVE DEFENSE

8 1. CMCB cannot be liable for the damages, if any, alleged in the Complaint and  
9 in each and every cause of action therein because each and every cause of action fails to  
10 state a claim and/or cause of action upon which relief may be granted.

#### 11 SECOND AFFIRMATIVE DEFENSE

12 2. CMCB alleges that each of MOD's purported claims for relief against CMCB  
13 is frivolous and unsupported.

#### 14 THIRD AFFIRMATIVE DEFENSE

15 3. The Complaint, and each and every claim and cause of action alleged therein,  
16 is barred by the doctrine of waiver,

#### 17 FOURTH AFFIRMATIVE DEFENSE

18 4. All of MOD's purported causes of action against CMCB are barred by the  
19 applicable statutes of limitations.

#### 20 FIFTH AFFIRMATIVE DEFENSE

21 5. The Complaint, and each and every claim and cause of action alleged therein,  
22 is barred by the doctrine of estoppel.

#### 23 SIXTH AFFIRMATIVE DEFENSE

24 6. The Complaint, and each and every claim and cause of action alleged therein,  
25 is barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

7. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

8. The Complaint, and each and every claim and cause of action alleged therein, is barred by the doctrine of acquiescence.

NINTH AFFIRMATIVE DEFENSE

9. MOD's alleged trade dress is not protectable trade dress, including, and without limitation, because the alleged trade dress is non-distinctive, lacks secondary meaning, lacks secondary meaning in the geographic area where the Pieology restaurants are located, and/or is both utilitarian and aesthetically functional.

TENTH AFFIRMATIVE DEFENSE

10. MOD's alleged trade secrets are not protectable trade secrets.

ELEVENTH AFFIRMATIVE DEFENSE

11. Each of MOD's purported causes of action against CMCB fails because CMCB has complied with all of its legal obligations with respect to MOD.

TWELFTH AFFIRMATIVE DEFENSE

12. MOD has not been damaged in the sums or manner alleged, or in any sum or manner, or at all.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Upon information and belief, CMCB states that MOD failed to mitigate, reduce, or avoid its damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Any injury or damage suffered or sustained by MOD, either as alleged in the Complaint or at all, was directly and proximately caused and contributed to by persons and entities other than CMCB.

FIFTEENTH AFFIRMATIVE DEFENSE

15. CMCB alleges that it cannot fully anticipate all affirmative defenses that may be applicable to this action based upon the conclusory allegations contained in the Complaint. Accordingly, CMCB expressly reserves the right to assert further defenses if, and to the extent that such affirmative defenses become available.

**VII. PRAYER FOR RELIEF**

WHEREFORE, defendant CMCB prays for judgment as follows:

- A. That MOD take nothing by its Complaint and that judgment be entered in favor of CMCB;
- C. That CMCB be awarded its costs and attorneys' fees incurred herein; and
- D. That the Court grant such other relief as it deems just and proper.

**VIII. JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38 CMCB demands a trial by jury on all issues so triable.

DATED: November 26, 2013

JEFFER MANGELS BUTLER & MITCHELL LLP

By: /s/ JESSICA BROMALL SPARKMAN

Rod S. Berman (CA Bar No. 105444), admitted *pro hac vice*, rberman@jmbm.com

Jessica Bromall Sparkman (CA Bar No. 235017), admitted *pro hac vice*, jbromall@jmbm.com

1900 Avenue of the Stars, 7th Floor

Los Angeles, CA 90067

• Phone: (310) 203-8080 • Fax: (310) 203-0567

By: /s/ R. BROH LANDSMAN

LANDSMAN & FLEMING LLP

R. Broh Landsman (WSBA #9321), broh@LF-law.com

1000 Second Avenue, Suite 3000

Seattle, WA 98104

• Phone: (206) 624-7900 • Fax: (206) 624-7903

*Attorneys for Defendants CARL CHANG, CMCB VENTURES, LLC, PIEOLOGY SPECTRUM, LLC, THE LITTLE BROWN BOX PIZZA, LLC, and PIEOLOGY FRANCHISE, LLC*

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